

SENATE BILL NO. 422

INTRODUCED BY V. JACKSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAW; PROVIDING THAT AN OBJECTION BY THE HOLDER OF A POWER GENERATION WATER RIGHT TO A NEW APPROPRIATION MAY BE CONSIDERED WATER SPECULATION; PROVIDING THAT AN ADVERSE EFFECT MUST BE MEASURABLE WHEN ADDRESSING A NEW APPROPRIATION RIGHT OR A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-1-101 AND 85-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-1-101, MCA, is amended to read:

"85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof of water resources are vital to the people in order to protect existing uses and to ~~assure~~ ensure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to ~~assure~~ ensure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization

plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water or surface water of the state of Montana is not in the interest of the people and is to be restricted. This includes objections by a holder of water rights for power generation to proposed appropriations upstream from the power generation facility.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan".

Section 2. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority -- recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) (a) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(b) For the purpose of determining adverse effect to a prior appropriator pursuant to this chapter, the impact of any new or changed appropriation right must be measurable using standards and methods accepted by the hydrologic and engineering professions. An objector to a new appropriation or a change in appropriation right pursuant to this chapter shall demonstrate how the change in the streamflow or the water table prevents the objector from exercising the objector's water rights under the changed provisions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(4), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation

1 authorization by the department.

2 (5) Any rules adopted by the department that address adverse effects must be based on a measurable
3 standard and the provisions of this part."

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5 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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